

(1) Third Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator and Attorney

Age: 92	<p>PUBLIC GUARDIAN, Conservator of the Person and Estate, is Petitioner.</p> <p>Account period: 4-19-10 through 8-5-11</p> <p>Accounting: \$191,625.30 Beginning POH: \$142,826.21 Ending POH: \$149,670.91 (\$17,985.85 cash)</p> <p>Conservator: \$2,834.00 (17.25 Deputy hours @ \$96.00/hr plus 15.50 Staff hours @ \$76.00/hr)</p> <p>Attorney: \$2,000.00 (per Local Rule)</p> <p>Bond fee: 178.25 (ok)</p> <p>Petitioner prays for an order:</p> <ol style="list-style-type: none"> 1. Approving, allowing and settling the account; 2. Authorizing the conservator and attorney fees and commissions; and 3. Authorizing payment of the bond fee. <p>Court Investigator Samantha Henson filed a report.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p>
DOB: 10-17-19		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
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✓ Notice of Hrg		
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Conf. Screen		
Letters		
Duties/Supp		
Objections		
Video Receipt		
✓ CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	<p>Reviewed by: skc</p> <p>Reviewed on: 10-25-11</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 2 - Withers</p>	

Atty Rube, Melvin K. (for Darryl B. Freedman, Trustee)

(1) First and Final Account and Report of Trustee and (2) Petition for Its Settlement and (3) Termination of the Special Needs Trust

Age: 30	<p>DARRYL B. FREEDMAN, Trustee of the Jesse Ramos Special Needs Trust, is Petitioner.</p> <p>Account period: 6-7-10 through 9-16-11</p> <p>Accounting: \$25,333.05 Beginning POH: \$25,333.05 Ending POH: \$0</p> <p>Trustee: Waived Attorney: Waived</p> <p>Petitioner states upon receipt of settlement funds in the amount of \$25,333.05, funds were disbursed for bond and attorney fees and costs, and a handicap-accessible van was purchased. The van was vested in Gloria Ramos' name (Jesse's mother) and his parents will remain financially responsible for the upkeep and insurance on the van.</p> <p>Petitioner prays for an order:</p> <p>4. Settling, allowing and approving the account and all acts and transactions of Petitioner therein;</p> <p>5. Exonerating the bond posted by Petitioner; and</p> <p>6. Terminating the Special Needs Trust as there are no longer any assets</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>1. Need Order.</p>	
DOB: 10-11-81			
Aff.Sub.Wit.			
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CI Report			
9202			
Order	X		
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		Reviewed by: skc	
		Reviewed on: 10-25-11	
		Updates:	
		Recommendation:	
		File 3 - Ramos	

(1) First Account Current and Report of Conservator and (2) Petition for Allowance of Compensation to Conservator

Age: 91 DOB: 10/05/20	PUBLIC GUARDIAN , Conservator, is Petitioner.	NEEDS/PROBLEMS/COMMENTS:
	Account Period: 07/29/10 – 07/31/11	
	Accounting - \$67,424.27	
Cont. from	Beginning POH - \$16,794.61	
Aff.Sub.Wit.	Ending POH - \$58,268.05	
✓ Verified	Conservator - \$1,377.28	
Inventory	(9.28 Deputy hours @ \$96.00/hr. and 6.40 staff hours @ \$76.00/hr.)	
PTC	Attorney - \$1,500.00	
Not.Cred.	(Less than allowed per Local Rule)	
✓ Notice of Hrg	Bond fee - \$125.02 (ok)	
✓ Aff.Mail	Petitioner prays for an Order:	
Aff.Pub.	1) Approving, allowing and settling the first account;	
Sp.Ntc.	2) Authorizing the conservator and attorney fees and commissions; and	
Pers.Serv.	3) Authorizing payment of the bond fee.	
Conf. Screen	Court Investigator Jennifer Daniel's report filed 07/22/11.	
Letters		
Duties/Supp		
Objections		
Video Receipt		
✓ CI Report		
2620(c)	n/a	
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: JF
		Reviewed on: 10/25/11
		Updates:
		Recommendation:
		File 5 - Lopez

Age: 9	<p>MELISSA RUSSELL, paternal grandmother, was appointed as guardian of the person and estate on 8-19-10.</p> <p>Inventory and appraisal filed 4-7-11 reflects an estate value of \$73,296.27.</p> <p>On 8-16-11, the Court set a status hearing on 10-3-11 for failure to file the first account.</p> <p>Notice was mailed to Attorney Bakergumprecht-Davies on 8-16-11.</p> <p>At hearing on 10-3-11, there were no appearances. The court set this Order to Show Cause and ordered Attorney Bakergumprecht-Davies to be present on 10-31-11.</p> <p>The minute order was mailed to Attorney Bakergumprecht-Davies on 10-7-11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note:</u> Page 9 of this calendar is the related case (this minor’s sibling).</p> <p>1. Need first account pursuant to Probate Code §2620.</p>
DOB: 6-22-02		
Aff.Sub.Wit.		
Verified		
Inventory		
PTC		
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Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
Status Rpt X		
UCCJEA		
Citation		
FTB Notice		
	<p>Reviewed by: skc</p> <p>Reviewed on: 10-25-11</p> <p>Updates:</p> <p>Recommendation:</p> <p>File 6 - Pitkin</p>	

(1) First and Final Report of Personal Representative, (2) Petition for Final Distribution on Waiver of Accounting (Prob. C. 12200)

DOD: 2-11-10	DORIS A. MANOCK , Spouse and Executor with full IAEA without bond, is Petitioner.	NEEDS/PROBLEMS/ COMMENTS:
	Accounting is waived.	
	I&A: \$858,682.93	
	POH Value: \$858,682.93	
	Executor: Waived	
	Attorney: Waived	
	Costs: \$775.50 (filing fees, certified letters)	
<input checked="" type="checkbox"/> Aff.Sub.Wit.		
<input checked="" type="checkbox"/> Verified		
<input checked="" type="checkbox"/> Inventory		
<input checked="" type="checkbox"/> PTC		
<input checked="" type="checkbox"/> Not.Cred.		
<input checked="" type="checkbox"/> Notice of Hrg		
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<input checked="" type="checkbox"/> Letters	10-18-10	
Duties/Supp		
Objections		
Video Receipt		
CI Report		
<input checked="" type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
<input checked="" type="checkbox"/> FTB Notice		
	Distribution pursuant to Decedent's will:	
	Doris A. Manock, Trustee of the Kendall L. Manock Testamentary Trust: POH Valued at \$858,682.93	
	Reviewed by: skc	
	Reviewed on: 10-25-11	
	Updates:	
	Recommendation: SUBMITTED	
	File 7 - Manock	

Ex parte Application for a Court Order to Require Marilyn Yamanaka to Provide Full Accounting and Copies of Documents with Respect to Money and/or Property and/or Expenses Relating to the Thelma Day Trust

Age: 97 years	<p>MONTIE S. DAY, son and named Successor Trustee of the THELMA DAY TRUST dated 11/10/1993, and NICOLE ANNE DAY, granddaughter, are Petitioners.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p>	
DOB: 6/14/1914			<p><u>Notes:</u></p> <ol style="list-style-type: none"> Petitioner Montie Day states in his Reply to Ms. Yamanaka’s Opposition that he will not be able to appear on 10/31/11 due to an immediate medical procedure as ordered by his cardiologist, and therefore he submits this matter on the pleadings. A Motion for Summary Judgment or alternatively, Summary Adjudication is scheduled for hearing on 1/12/12.
Cont. from	<p>Petitioners request: The Court order Respondent Marilyn Yamanaka to provide, within 10 days of the order, an accounting and records relating to the Thelma Day Trust (“Trust”) and the assets/expenses of Yamanaka as trustee or that Ms. Yamanaka file with the Court a statement that she maintains her 5th Amendment Rights against self-incrimination with respect to her activities relating to the Trust and Thelma Day.</p>	<p>Reviewed by: NRN</p>	
Aff.Sub.Wit.	<p>Petitioners state:</p>	<p>Reviewed on: 10/27/11</p>	
Verified	<ul style="list-style-type: none"> Marilyn Yamanaka (“Yamanaka”), named successor trustee, initially filed a petition with this Court to be confirmed as trustee of the Thelma Day Trust and that she be recognized as the “Agent” of Thelma Day under a Uniform Statutory Form Power of Attorney based upon documents executed by Thelma Day on 2/18/09; Petitioners filed an answer and objection to Yamanaka’s petition, and filed their own petition to confirm Montie S. Day as Trustee of the Thelma Day Trust of 1993, as well to remove Yamanaka as trustee; Further investigation and discovery led to evidence tending to establish that Yamanaka procured the 2009 document by fraud, duress and undue influence, and that Yamanaka was unqualified to serve as trustee having engaged in wrongful activities reflecting potential civil and criminal activities; Yamanaka further refused to provide financial information in response to written discovery, and during her deposition when questioned regarding financial matters and forged checks drawn on Thelma Day’s bank accounts, claimed the 5th Amendment right refuse to answer questions; On 7/29/11, the matter was set for settlement conference, Yamanaka resigned as trustee, and the Court appointed the Public Guardian; The matter was originally assigned an 8/2/11 trial date, however on the day of trial the matter was returned based upon lack of jurisdiction and jurisdictional issues; on 8/2/11 however the issue of an accounting was raised and the Court clearly stated an accounting would be required of Yamanaka, with a copy provided to Petitioner Montie Day. Though Yamanaka’s attorney, Mr. Keeler, objected to providing an accounting to Mr. Day, the Court was clear Mr. Day was to receive a copy as a matter of right and continued the matter to 8/10/11; At the 8/10/11 hearing, the Court again advised all counsel that an accounting would be provided; the matter that day was taken off-calendar as Mr. Day informed the Court he would be filing a motion for summary judgment; that motion was filed on 9/9/11; Yamanaka has failed to provide an accounting to date, despite Mr. Day’s written request of 9/7/11 (<i>Mr. Day’s written correspondence attached as Exh. A</i>). 	<p>Updates:</p>	
Inventory		<p>Recommendation:</p>	
PTC		<p>File 8 - Day</p>	
Not.Cred.		<p><u>SEE ATTACHED PAGE</u></p>	
Notice of Hrg			
Aff.Mail		FTB Notice	
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Yamanaka's 5th Amendment Privilege

- As stated, Yamanaka invoked the 5th Amendment privilege during her 3/22/11 deposition. Since that time, Yamanaka has not submitted to the Court any one declaration, pleading, or other document(s) under penalty of perjury. If she does so submit (even in opposition to Petitioners' Motion for Summary Judgment), and the document(s) relates to the financial matters and/or her activities relating to the Trust, she effectively waives this 5th Amendment right against self-incrimination. *Brown v. United States* (1957) 356 U.S. 148; *Rogers v. United States* (1950) 340 U.S. 367; *Regents of the University of California v. Superior Court* (1962) 200 Cal. App. 2d 787. When a defendant takes the witness stand or otherwise offers testimony under oath on the subject of the litigation, he or she waives the privilege against self-incrimination. *Brown v. United States, supra*.

Objection to Petitioners' Ex parte Application, filed 10/12/11 by Marilyn Yamanaka (or "Respondent"), states:

Petitioners Lack Standing to make their Application

- Neither Petitioner has standing to bring the instant application to request a court order for an accounting;
- PrC § 17200 and C.C.P. §§ 367 and 369 only allow specific persons to bring such a petition before the Court; here, those persons are Yamanaka as successor trustee, the Public Guardian as current trustee, Thelma Day herself, or Ms. Day's court-appointed counsel, Stanley Teixeira – and none of them have requested an accounting;
- At hearing in the Court several weeks ago Yamanaka's attorney William Keeler informally agreed to provide an accounting to the Public Guardian, and is in the process of doing so; however, nothing was promised to either Petitioner, who both lack standing to bring their application;
- Further, pursuant to PrC §16062(a), a trustee is required to account to beneficiaries to whom income or principal is required or authorized in the trustee's discretion to be currently distributed; additionally, PrC §16069(a) states that a trustee is not required to account for a beneficiary in the case of a revocable trust during the period of time the trust may be revoked (and therefore, Petitioner Nicole Day is not entitled to an accounting as a trust beneficiary while Thelma Day is still alive).

Petitioners have failed to establish their need for an ex parte action

- Petitioners offer no factual or legal basis for requiring the Court to make an *ex parte* decision, as there is no reason to be concerned with irreparable harm, or any harm, in this instance;
- There is currently no trial date, nor are there upcoming court deadlines necessitating Petitioners' *ex parte* request – the next hearing is on Petitioners' MSJ, which will be heard 1/12/12;
- The Public Guardian's current protections of Thelma Day, as conservator and trustee, further confirms the *ex parte* is unnecessary, as does Attorney Teixeira's current appointment as court-appointed counsel for Thelma Day;
- Counsel for Yamanaka spoke with Attorney Kruthers and Attorney Teixeira, and neither are requesting an accounting on an *ex parte* basis, nor do they intend to bring a noticed motion for an accounting.

Respondent requests that the Court dismiss Petitioners' application for lack of standing and as Petitioners are not entitled to an accounting.

SEE ATTACHED PAGE

Dept. 303, 9:00 a.m. Monday, October 31, 2011

Petitioners' Reply to Respondent Yamanaka's Opposition, filed 10/17/11, states

- Respondent's Opposition assumes that Yamanaka was a legitimate trustee;
- As shown in Petitioners' pending MSJ, Yamanaka has operated a fraudulent scam in Fresno for years and has been involved in "Ponzi" investment to operating businesses under company names without authorization of the owners of such businesses, and she has operated without proper licenses by the State of California;
- Yamanaka obtained documents which purported to give her the power to be trustee from Thelma Day, through fraud and while Thelma Day suffered from Alzheimer's Disease/dementia.
- For sake of argument only, Petitioners will assume Yamanaka was trustee until her resignation.

The Court has already required an accounting and that is would be provided to Petitioner Montie Day

- At the 8/2/11 Court hearing, this Court stated on the record that an accounting would be required from Yamanaka within 30 days after the 8/30/11 status conference date and that a copy would be provided to Petitioner Day; this was ordered by the Court over Attorney Keeler's objections;
- Petitioner Montie Day was designated trustee of the Trust under the 1993 Trust, and as trustee under the 2009 amendments, in the event Yamanaka resigned or was otherwise no available to serve;
- On its own motion and over Petitioner Day's objections, this Court appointed the Public Guardian as trustee; however, this also does not forbid the Court from ordering the former trustee to provide an accounting to Thelma Day's family and those designated and affect by Trust documents.

This Court has the Authority to order and accounting be provided to Petitioner Day, contrary to Respondent's arguments

- PrC §16062 actually provides that the **trustee shall account** at least annually, at the termination of the trust, and **upon change of trustee**, to each beneficiary to whom income or principal is required or authorized in the trustee's discretion to be currently distributed (*emphasis added*);
- Thus, it is mandatory that an accounting be provided – whether or not the beneficiary entitled to current distributions requests one;
- Further, while it is acknowledged that neither Petitioner is entitle to a distribution of income and/or principal at this time, the §16062 only relates to when mandatory accountings are required, and there is no prohibition form the Court, in the interest of justice, from ordering that other accountings be made and provided to potential successor trustees and/or remainder beneficiaries upon the death of Thelma Day and Derrell Day;
- It must also be noted that Yamanaka's attorney does not mention PrC §§ 16060 and 16061; §16060 provides that a trustee's general duty to keep trust beneficiaries reasonably informed of the trust and its administration; and §16061 provides except as provided in 16069, on reasonable request by a beneficiary, the trustee shall report to the beneficiary by providing requested information to the beneficiary relating to trust administration relevant to the beneficiary's interest;
- Finally, remainder beneficiaries (which Petitioners are) have standing to petition the probate court pursuant to PrC §17200(b)(7), and to compel trustee to provide information pursuant to PrC §16061 where, in its order compelling the trustee to account, the court specifically states it was making its order under §17200 – which grants it authority to make decisions concerning the internal affairs of a trust, including ordering the trustee to account to a beneficiary under §16061. *Esslinger v. Cummins* (2006) Cal. App. 4th 517.
- **Respondent concludes** that the Court has the inherent power to order an accounting and production of information to the remainder beneficiaries pursuant to PrC §16061, and that Petitioners have standing to request such an order, regardless of whether or not the current trustee or court-appointed attorney for Thelma Day requests one.

Dept. 303, 9:00 a.m. Monday, October 31, 2011

Order to Show Cause Re: Failure to File Annual or Biennial Account

Age: 6	<p>MELISSA RUSSELL, paternal grandmother, was appointed as guardian of the person and estate on 8-19-10.</p> <p>Inventory and appraisal filed 4-7-11 reflects an estate value of \$73,296.27.</p> <p>On 8-16-11, the Court set a status hearing on 10-3-11 for failure to file the first account.</p> <p>Notice was mailed to Attorney Bakergumprecht-Davies on 8-16-11.</p> <p>At hearing on 10-3-11, there were no appearances. The court set this Order to Show Cause and ordered Attorney Bakergumprecht-Davies to be present on 10-31-11.</p> <p>The minute order was mailed to Attorney Bakergumprecht-Davies on 10-7-11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note:</u> Page 6 of this calendar is the related case (this minor's sibling).</p> <p>1. Need first account pursuant to Probate Code §2620.</p>
DOB: 10-14-05		
Aff.Sub.Wit.		
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Letters		
Duties/Supp		
Objections		
Video Receipt		
CI Report		
9202		
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Status Rpt		
UCCJEA		
Citation		
FTB Notice		
	Reviewed by:	
	Reviewed on:	
	Updates:	
	Recommendation:	
	File 9 - Pitkin	

Age: 4	<p>TIFFANY ELIZABETH-MARIE LONG, Mother, is Petitioner.</p> <p>IRIS and DOMINIC D’INNOCENTI, Maternal Grandmother and Step-Grandfather, were appointed Guardians on 5-17-11.</p> <p>Father: Jonathan Villasana Paternal Grandfather: Manuel Villasana Paternal Grandmother: Irene Villasana Maternal Grandfather: Lawrence P. Long</p> <p>Petitioner states she is mentally and physically capable to care for her child.</p> <p>Guardians’ Objections filed 9-15-11 state the Petition for Termination does not meet the minimum standards necessary to be considered by the court (authority cited), and that it is in the children’s best interest to remain with Guardians. It would not only be inappropriate to terminate the guardianships, but it would be harmful and potentially dangerous living situation if the children were required to live with their mother. At best, Mother should only see the children in supervised and therapeutic visitation settings.</p> <p>Court Investigator Samantha Henson filed a report on 9-12-11.</p> <p style="text-align: center;">SEE PAGE 2</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note:</u> Page 11 is the related case of this child’s sibling Kyoah Sage Rose Gullihur 11CEPR00212.</p> <p><u>Minute Order 9-19-11:</u> Mother will be moving into her own residence on 10-1-11 and asks the Court for a continuance. After 10-1-11, the Court Investigator will review. Mother states visits occur with the father supervising. Visits are to remain as is – supervised through the father.</p>
DOB: 8-3-07		
Cont. from 091911		
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<input type="checkbox"/> Inventory		
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<input type="checkbox"/> Notice of Hrg		
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<input type="checkbox"/> Video Receipt		
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<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
Updates:		
Contacts: reviewed 10-25-11		
Recommendation:		
Reviewed by: skc		
File 10 - Villasana		

Atty Long, Tiffany Elizabeth-Marie (Pro Per – Mother – Petitioner)
Atty Shahbazian, Steven L. (for Iris and Dominic D’Innocenti – Guardians)
Petition for Termination of Guardianship

SUMMARY (Continued):

Mother’s Declaration in Support of Petition for Termination filed 9-16-11 states the children lived with her until approx. February 2010, and at that time, due to personal and health issues, she agreed to let the children to live temporarily with her parents while she worked on recovery. During this time, she had regular contact with the children and was as actively involved as possible, at her parents’ discretion. Mother states she thought she was only signing a medical consent form for the children, but after Mother’s Day, when she called to arrange a visit, she was told she could not see them, because she had actually signed a consent to the guardianship, and visits needed to be supervised. She believes her parents did this to spite her because they were aware of her intentions to bring the children home, since she was given a “clean bill of health” from her doctor. Mother also provides a declaration from her church leader.

Court Investigator Samantha Henson’s additional report was filed on 10-24-11.

Age: 7	<p>TIFFANY ELIZABETH-MARIE LONG, Mother, is Petitioner.</p> <p>IRIS and DOMINIC D’INNOCENTI, Maternal Grandmother and Step-Grandfather, were appointed Guardians on 5-17-11.</p> <p>Father: Justin Paul Gullihur Paternal Grandfather: Steve Gullihur Paternal Grandmother: Mary Ann Gullihur Maternal Grandfather: Lawrence P. Long</p> <p>Petitioner states she is mentally and physically capable to care for her child.</p> <p>Guardians’ Objections filed 9-15-11 state the Petition for Termination does not meet the minimum standards necessary to be considered by the court (authority cited), and that it is in the children’s best interest to remain with Guardians. It would not only be inappropriate to terminate the guardianships, but it would be harmful and potentially dangerous living situation if the children were required to live with their mother. At best, Mother should only see the children in supervised and therapeutic visitation settings.</p> <p>Court Investigator Samantha Henson filed a report on 9-12-11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note:</u> Page 10 is the related case of this child’s sibling Morgan Evan-Blue Villasana 11CEPR00211.</p>	
DOB: 11-4-03			
Cont. from 091911			
Aff.Sub.Wit.			
✓ Verified			
Inventory			
PTC			
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Notice of Hrg			X
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Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
✓ Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
		<p>Updates:</p> <p>Contacts: reviewed 10-25-11</p> <p>Recommendation:</p> <p>Reviewed by: skc</p> <p>File 11 - Gullihur</p>	

Atty Long, Tiffany Elizabeth-Marie (Pro Per – Mother – Petitioner)
Atty Shahbazian, Steven L. (for Iris and Dominic D’Innocenti – Guardians)
Petition for Termination of Guardianship

SUMMARY (Continued):

Mother’s Declaration in Support of Petition for Termination filed 9-16-11 states the children lived with her until approx. February 2010, and at that time, due to personal and health issues, she agreed to let the children to live temporarily with her parents while she worked on recovery. During this time, she had regular contact with the children and was as actively involved as possible, at her parents’ discretion. Mother states she thought she was only signing a medical consent form for the children, but after Mother’s Day, when she called to arrange a visit, she was told she could not see them, because she had actually signed a consent to the guardianship, and visits needed to be supervised. She believes her parents did this to spite her because they were aware of her intentions to bring the children home, since she was given a “clean bill of health” from her doctor. Mother also provides a declaration from her church leader.

Court Investigator Samantha Henson’s additional report was filed on 10-24-11.

**Petition for Probate of Will and for Letters of Administration with Will Annexed;
 Authorization to Administer Under IAEA (Prob. C. 8002, 10450)**

DOD: 3/15/11		<p>GREGORY C. DOWDY, grandson, is petitioner and requests appointment as Administrator with Will Annexed and with bond set at \$80,000.00.</p> <p>Full IAEA – o.k.</p> <p>Will dated: 12/21/1990</p> <p>Residence: Fresno Publication: Fresno Business Journal</p> <p><u>Estimated value of the estate:</u> Real property - \$80,000.00</p> <p>Probate Referee: Steven Diebert</p> <p>Objections of Ann Ross Matthees filed on 8/29/11. Objector states she is the daughter of the decedent. She is currently incarcerated in Lincoln Nebraska. Her tentative release date is October 16, 2011. She is objecting to her son, Gregory Dowdy being appointed as Executor or to have any legal ability to sell the home in California, Nebraska or any such place noted belonging to the decedent. Objector feels that her son’s intentions are not in the best interest of the family, but for his own profit.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>An Amended Petition was filed and has been set for hearing on 10/31/11. The Amended Petition requests Timothy Johnson be appointed as Administrator With Will Annexed. It is unclear if this Petitioner, Gregory Dowdy, is withdrawing his request to be appointed as Administrator or if he still wishes to go forward with this petition.</p> <p><u>For Petitioner:</u></p> <ol style="list-style-type: none"> 1. Need Order and Letters <p><u>For Objector:</u></p> <ol style="list-style-type: none"> 1. Objections were not filed in the proper format. Objections were filed using a Notice of Proposed Action form. The Notice of Proposed Action form is for objecting to something the personal representative is proposing to do after they are appointed. 2. Objections were not verified. Probate Code §1021.
Cont. from 090611, 101711			
Aff.Sub.Wit.	S/P		
✓ Verified			
Inventory			
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Letters	X		
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Citation			
FTB Notice			
Reviewed by: KT			
Reviewed on: 10/25/11			
Updates:			
Recommendation:			
File 12 - Johnson			

**Petition for Probate of Will and for Letters of Administration with Will Annexed
(Prob. C. 8002, 10450)**

DOD: 08/26/11	MICHAEL J. BIGGS , son, is Petitioner and requests appointment as Administrator with Will Annexed without bond.	NEEDS/PROBLEMS/COMMENTS:
Cont. from		
<input type="checkbox"/> Aff.Sub.Wit.	s/p	
<input checked="" type="checkbox"/> Verified		
<input type="checkbox"/> Inventory	Full IAEA – NEED	
<input type="checkbox"/> PTC	All heirs waive bond.	
<input type="checkbox"/> Not.Cred.	Will dated 04/08/07	
<input checked="" type="checkbox"/> Notice of Hrg	Residence: Kerman	
<input checked="" type="checkbox"/> Aff.Mail	Publication: NEED	
<input type="checkbox"/> Aff.Pub.		
<input type="checkbox"/> Sp.Ntc.		
<input type="checkbox"/> Pers.Serv.	<u>Estimated Value of the Estate:</u>	
<input type="checkbox"/> Conf. Screen	Personal property - \$ 48,000.00	
<input checked="" type="checkbox"/> Letters	Real property - 125,000.00	
<input checked="" type="checkbox"/> Duties/Supp	Total - \$173,000.00	
<input type="checkbox"/> Objections	Probate Referee: STEVEN DIEBERT	
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input checked="" type="checkbox"/> Order		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
		Reviewed by: JF
		Reviewed on: 10/25/11
		Updates:
		Recommendation:
		File 13 - Biggs

Atty Roberts, David A. (for David J. St. Louis – Successor Co-Trustee and friend)
 Atty Boyett, Deborah (Court-appointed for Proposed Conservatee Wanda H. Bingham)
 Petition for Appointment of Temporary Conservator of the Person (Prob. C. 2250)

Wanda H. Bingham Age: 96 DOB: 6-29-15	TEMPORARY GRANTED EX PARTE EXPIRES 10-31-11 GENERAL HEARING: 11-22-11	NEEDS/PROBLEMS/COMMENTS: <u>Note:</u> Page 15 is a petition for temporary conservatorship of Byrum C. Bingham (Wanda’s husband). <u>Court Investigator advised rights on 10-21-11.</u> 1. Need Confidential Supplemental Information (Mandatory Judicial Council Form GC-312). 2. Need mandatory Judicial Council Attachment for Dementia (GC-335A) regarding dementia medication and placement pursuant to Probate Code §2356.5. 3. Petitioner does not address notice required under Probate Code §2352(e)(3) and Cal. Rule of Court 7.1063 to remove the conservatee from his or her personal residence. (See Mandatory Judicial Council Form GC-079 Pre-Move Notice).																																														
Byrum C. Bingham Age: 94 DOB: 4-17-17	DAVID J. ST. LOUIS, Successor Co-Trustee of the BYRUM C. AND WANDA H. BINGHAM FAMILY TRUST DATED 4-1-98 (11CEPR00918) and 1 st Alternate Agent under Mrs. Bingham’s Advance Health Care Directive dated 9-29-09, is Petitioner. Petitioner requests appointment as Temporary Conservator of the Person with dementia medication and placement powers during the temporary conservatorship and authority to change Mrs. Bingham’s residence to Somerford Place in Fresno, an assisted living facility. Petitioner states Mr. and Mrs. Bingham live together in their home. Mr. Bingham has dementia and a petition for his conservatorship is filed concurrently (Page 15 of this calendar). Mrs. Bingham is forgetful and forgets to eat and take her medication. Two doctors have indicated major impairment regarding understanding quantities and orientation as to where she is. Mrs. Bingham continues to drive even though she no longer has a license and it is feared that she will drive and forget where she is or injure herself or another in an accident. Capacity Declaration was filed 10-19-11. Declaration of Markham Kirsten, MD, was filed 10-19-11.. Court Investigator Dina Calvillo filed a report on 10-25-11.																																															
<table border="1"> <tr><td>Aff.Sub.Wit.</td><td></td></tr> <tr><td>✓ Verified</td><td></td></tr> <tr><td>Inventory</td><td></td></tr> <tr><td>PTC</td><td></td></tr> <tr><td>Not.Cred.</td><td></td></tr> <tr><td>✓ Notice of Hrg</td><td></td></tr> <tr><td>✓ Aff.Mail</td><td></td></tr> <tr><td>Aff.Pub.</td><td></td></tr> <tr><td>Sp.Ntc.</td><td></td></tr> <tr><td>✓ Pers.Serv.</td><td></td></tr> <tr><td>✓ Conf. Screen</td><td>X</td></tr> <tr><td>✓ Letters</td><td></td></tr> <tr><td>✓ Duties/Supp</td><td></td></tr> <tr><td>Objections</td><td></td></tr> <tr><td>Video Receipt</td><td></td></tr> <tr><td>✓ CI Report</td><td></td></tr> <tr><td>9202</td><td></td></tr> <tr><td>✓ Order</td><td></td></tr> <tr><td>Aff. Posting</td><td></td></tr> <tr><td>Status Rpt</td><td></td></tr> <tr><td>UCCJEA</td><td></td></tr> <tr><td>Citation</td><td></td></tr> <tr><td>FTB Notice</td><td></td></tr> </table>	Aff.Sub.Wit.		✓ Verified		Inventory		PTC		Not.Cred.		✓ Notice of Hrg		✓ Aff.Mail		Aff.Pub.		Sp.Ntc.		✓ Pers.Serv.		✓ Conf. Screen	X	✓ Letters		✓ Duties/Supp		Objections		Video Receipt		✓ CI Report		9202		✓ Order		Aff. Posting		Status Rpt		UCCJEA		Citation		FTB Notice			Reviewed by: skc Reviewed on: 10-26-11 Updates: Recommendation: File 14 - Bingham
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<p>Wanda H. Bingham Age: 96 DOB: 6-29-15</p> <hr/> <p>Byrum C. Bingham Age: 94 DOB: 4-17-17</p> <hr/> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 100px;">Aff.Sub.Wit.</td><td></td></tr> <tr><td>✓ Verified</td><td></td></tr> <tr><td>Inventory</td><td></td></tr> <tr><td>PTC</td><td></td></tr> <tr><td>Not.Cred.</td><td></td></tr> <tr><td>✓ Notice of Hrg</td><td></td></tr> <tr><td>✓ Aff.Mail</td><td style="text-align: center;">W</td></tr> <tr><td>Aff.Pub.</td><td></td></tr> <tr><td>Sp.Ntc.</td><td></td></tr> <tr><td>✓ Pers.Serv.</td><td style="text-align: center;">W</td></tr> <tr><td>✓ Conf. Screen</td><td></td></tr> <tr><td>✓ Letters</td><td></td></tr> <tr><td>✓ Duties/Supp</td><td></td></tr> <tr><td>Objections</td><td></td></tr> <tr><td>Video Receipt</td><td></td></tr> <tr><td>CI Report</td><td></td></tr> <tr><td>9202</td><td></td></tr> <tr><td>✓ Order</td><td></td></tr> <tr><td>Aff. Posting</td><td></td></tr> <tr><td>Status Rpt</td><td></td></tr> <tr><td>UCCJEA</td><td></td></tr> <tr><td>Citation</td><td></td></tr> <tr><td>FTB Notice</td><td></td></tr> </table>	Aff.Sub.Wit.		✓ Verified		Inventory		PTC		Not.Cred.		✓ Notice of Hrg		✓ Aff.Mail	W	Aff.Pub.		Sp.Ntc.		✓ Pers.Serv.	W	✓ Conf. Screen		✓ Letters		✓ Duties/Supp		Objections		Video Receipt		CI Report		9202		✓ Order		Aff. Posting		Status Rpt		UCCJEA		Citation		FTB Notice		<p>TEMPORARY GRANTED EX PARTE EXPIRES 10-31-11</p> <p>GENERAL HEARING: 11-22-11</p> <p>DAVID J. ST. LOUIS, Successor Co-Trustee of the BYRUM C. AND WANDA H. BINGHAM FAMILY TRUST DATED 4-1-98 (11CEPR00918) and 1st Alternate Agent under Mr. Bingham's Advance Health Care Directive dated 9-29-09, is Petitioner.</p> <p>Petitioner requests appointment as Temporary Conservator of the Person with dementia medication and placement powers during the temporary conservatorship and authority to change Mrs. Bingham's residence to Somerford Place in Fresno, an assisted living facility.</p> <p>Petitioner states Mr. and Mrs. Bingham live together in their home. Mr. Bingham has dementia and can no longer care for himself. He forgets to take medication and eat meals, and often forgets where he is. He has been involved in two collisions within the last 30 days. He has become physically aggressive with his wife, including pushing swinging at her. Home caregivers are unable to control his actions. When taken to assisted living in the past, has left and gone home. It is feared he will forget to eat, take his medication, get lost, or become aggressive, including on the road.</p> <p>Capacity Declaration was filed 10-19-11.</p> <p>Declaration of Markham Kirsten, MD, was filed 10-19-11.</p> <p>Court Investigator Dina Calvillo filed a report on 10-25-11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Note:</u> Page 14 is a petition for temporary conservatorship of Wanda H. Bingham (Byrum's wife).</p> <p><u>Court Investigator advised rights on 10-21-11.</u></p> <ol style="list-style-type: none"> 4. Need Confidential Supplemental Information (Mandatory Judicial Council Form GC-312). 5. Need mandatory Judicial Council Attachment for Dementia (GC-335A) regarding dementia medication and placement pursuant to Probate Code §2356.5. 6. Petitioner does not address notice required under Probate Code §2352(e)(3) and Cal. Rule of Court 7.1063 to remove the conservatee from his or her personal residence. (See Mandatory Judicial Council Form GC-079 Pre-Move Notice). <hr/> <p>Reviewed by: skc</p> <hr/> <p>Reviewed on: 10-26-11</p> <hr/> <p>Updates:</p> <hr/> <p>Recommendation:</p> <hr/> <p>File 15 - Bingham</p>
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Citation																																																
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Atty Matsumoto, Russell D. (for Sandra Edmiston & Sheridan Rodkey – Trustees)

Atty Smoot, John E. of Willits (for Peggy Walton – Contestant)

Atty Howk, Robert L. (it is unclear who he is representing, but appeared at 10/03/11 hearing)

Status Hearing Re: Petition of Trustees for Instructions and Confirmation of Report of Trust Administration, First and Final Accounting, and Proposed Final Distribution of Trust Estate (Prob. C. 17200, et seq)

		<p>SANDRA EDMISTON and SHERIDAN RODKEY, as Trustees of the BETTY LAHARGOUE LIVING TRUST filed a Petition for Instructions and Confirmation of Report of Trust Administration, First and Final Accounting, and Proposed Final Distribution of Trust Estate on 08/18/11 with a hearing set for 10/03/11.</p> <p>Objections to Fiduciaries’ Account and Request for Surcharge of Fiduciary and other Remedies filed 09/28/11 by PEGGY WALTON, contestant and trust beneficiary.</p> <p>Minute Order from hearing on 10/03/11 set this matter for status and states: Mr. Matsumoto is appearing via conference call. The Court orders that there be no expenditures by the trust without a noticed hearing and order of the court. The Court advises counsel that it will entertain an order shortening time.</p> <p>First Supplement to First and Final Account filed 10/04/11 by Trustees Sandra Edmiston and Sheridan Rodkey supplements the First and Final Account included in the Petition filed 08/18/11 without any change, modification, or amendment of any portion of that petition and sets forth the charges and credits the Trustees’ were entitled to for the period of 07/12/11 – 08/11/11.</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>CONTINUED TO 12/05/11</u> Per Stipulation and Order signed 10/27/11.</p> <p>1. Need Status update report.</p>
Cont. from			
Aff.Sub.Wit.			
Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			
Aff.Mail			
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			
Conf. Screen			
Letters			
Duties/Supp			
Objections			
Video Receipt			
CI Report			
9202			
Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation			
FTB Notice			
			<p>Reviewed by: JF</p> <p>Reviewed on: 10/26/11</p> <p>Updates:</p> <p>Recommendation: File 16 - LaHargoue</p>

Atty Hemb, Richard E. (for David D. Graber, Executor, son)
 Pro Per Nelson, Michele M. (Pro Per Contestant, daughter)

Probate Status Hearing Re: Filing of Petition for Final Distribution

DOD: 2/24/2010	<p>DAVID D. GRABER, son, was appointed Executor with full IAEA with bond of \$564,000.00 and Decedent's undated Holographic Will was admitted to probate on 9/13/2010. Bond was filed on 10/22/2010 and <i>Letters</i> issued 11/15/2010.</p> <p>MICHELE M. NELSON, daughter, filed a <i>Contest and Grounds of Opposition to Probate of Will</i> on 9/13/2010.</p> <p>Executor filed on 2/25/2011 a <i>Petition for Approval of Settlement of Will Contest/Revocation</i>, which was granted per <i>Minute Order</i> dated 4/11/2011, and <i>Contest and Grounds of Opposition to Probate of Will</i> was denied and dismissed. <i>Minute Order</i> dated 4/11/2011 set a status hearing on 7/11/2011 for the filing of a petition for final distribution.</p> <p><i>Status Conference Statement</i> filed by David D. Graber on 7/7/2011 states in brief sum: Petitioner's unlawful detainer action and trial against Ms. Nelson resulted in a judgment in favor of the Petitioner and the sheriff's department evicted Ms. Nelson on 5/9/2011; since gaining access to the personal residence of Decedent, the personal representative has now conducted an exhaustive inventory of the personal property, and an inventory and appraisal has recently been submitted to the probate referee appointed by this Court [Rick Smith].</p> <p><i>Status Conference Statement</i> filed by David D. Graber on 9/21/2011 states in brief sum: Petitioner contracted with an estate auction firm to handle disposition of certain personal property items, with the exception of those directed in the Will and agreed to under the settlement agreement; a real estate professional has been selected to market certain real property; the estate has proceeded slowly considering the contest, settlement discussions and obtaining unrestricted access to Decedent's real property; the personal representative does not foresee any additional delays other than the normal marketability under current real estate conditions for the two parcels of real property owned by Decedent.</p> <p style="text-align: center;">~Please see additional page~</p>	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p><u>Continued from 9/26/2011.</u></p> <ol style="list-style-type: none"> <i>Status Conference Statement</i> filed 10/26/2011 is not verified by the personal representative as required by Probate Code §§ 1021(b)(2) and 1023, CA Rule of Court 7.103, and Local Rule 7.5. Need <i>Notice of Hearing</i> and proof of service of notice with a copy of the <i>Status Report</i> filed on 10/26/2011 on all interested parties pursuant to Local Rule 7.5(B), and Probate Code § 12201(b), as follows: <ul style="list-style-type: none"> • James Graber, son; • Robin Graber, daughter; • Laura Luster, daughter; • Michele Nelson, daughter; • Michael Nelson, grandchild; • Gregory Rieth, grandchild; • Caitlin Graber, grandchild; • Robert Graber, daughter; • Mason Graber, grandchild; • Madison Graber, grandchild; • Zola DeLuca, friend. <p>Note: <i>Final Inventory and Appraisal</i> filed on 8/25/2011 shows an estate value of \$430,386.03.</p>
Cont. from 071111, 092611		
Aff.Sub.Wit		
Verified	X	
Inventory		
PTC		
Not.Cred.		
Notice of Hrg	X	
Aff.Mail	X	
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
Conf. Screen		
Letters		
Duties/Sup		
Objections		
Video Receipt		
CI Report		
9202		
Order		
Aff. Posting		
✓ Status Rpt		
UCCJEA		
Citation		
FTB Notice		
		Reviewed by: LEG
		Reviewed on: 10/26/11
		Updates: 10/27/11
		Recommendation:
		File 17 – Graber

Status Conference Statement filed by **David D. Graber** on **10/26/2011** states [*sans information contained in the previous statements*]: The personal representative has conducted an estate sale for the personal property of the Decedent and has transferred possession of items devised in the Will and agreed to in the settlement agreement; the remaining item to resolve is the sale of two parcels of real property, namely, Decedent's personal residence in Fresno and vacant land in Madera County.

Termination of Guardianship (Probate Code 1460, 1601, 2626, 2627, 2636)

Age: 8 years DOB: 11/14/2002	RUDUN ROBERT IMMEL , father, is petitioner.	<p>NEEDS/PROBLEMS/COMMENTS:</p> <p>Continued from 9/19/11. Minute Order states for the record, the maternal grandfather [Rudun] Robert Immel, is listed as the father on the birth certificate, and was placed as such per the mother Michelle Immel's request. The father is unknown. Kimberly Elsea wishes to file written objections. Ms. Cathy Burnie has been given notice, therefore service has been effected on Ms. Burnie. Michelle Immel is in favor of Mr. Immel obtaining custody of the minor. Current visits are to continue, i.e. with Mr. Immel Thursday evening through Monday morning. No one is to communicate with the minor regarding this proceeding.</p> <p>Reviewed by: KT Reviewed on: 10/25/11 Updates: Recommendation: File 18 - Immel</p>
	KIMBERLY L. ELSEA , non-relative, was appointed as guardian on 1/8/07.	
	Mother: MICHELE R. IMMEL – present in court on 9/19/11.	
Cont. from 091911		
Aff.Sub.Wit.		
✓ Verified	Paternal grandparents: Deceased.	
Inventory	Maternal grandmother: Cathy Burnie	
PTC	Maternal grandfather: not listed	
Not.Cred.	Petitioner states the guardian is not the minor's parent or relative. She is hostile and vindictive to the minor and the minor's relatives. The guardian has falsified documents to the welfare office and has lied about the whereabouts of petitioner to Fresno County Social Services.	
✓ Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
✓ Pers.Serv. W/	Court Investigator Jo Ann Morris' Report filed on 9/12/11.	
Conf. Screen		
Letters		
Duties/Supp		
✓ Objections	Ex Parte Order for Modification of Visitation, Temporary order and for Order Shortening Time filed on 10/21/11. The Court orders the Ex Parte Petition for Modification of Visitation, Temporary Orders, and for Order Shortening Time is denied. Visitation as ordered by this Court on 9/19/11 is to continue, i.e., with Ruden Robert Immel Thursday evening through Monday morning, except for the weekend of October 20 through October 23, 2011, during which time the minor may accompany the Guardian on a pre-planned camping trip, and upon the minor's return he may have visitation with Rudun Robert Immel on October 24, 2011 until that evening at 6:00 p.m. The Court further orders: No one is to communicate with the minor regarding this proceeding.	
Video Receipt		
CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
UCCJEA		
Citation		
FTB Notice		

Please see additional page

Objections of Kimberly Elsea to Report and Recommendation of Court Investigator filed on 10/3/11. Objector states that the minor has lived with her since his birth and that she is the only mother he has ever known. Rudun Robert Immel is listed on the birth certificate as the “father” however he is actually the step-father of the minor’s mother, Michelle Immel and has no blood relationship with the minor. Objector states she has always tried to provide for the minor without the assistance of governmental aid. Mr. Immel has never attempted to make any real effort to offer child support and has made every attempt to deny his obligation for the same. The only time Mr. Immel has ever objected to the current arrangement or to the guardianship is when he is about to lose benefits or to be held accountable for his obligation to support.

Objector believes that Mr. Immel’s motivation for his petition is based on his need to help provide for his new family. His history of applying for and receiving financial assistance when none is due him, on behalf of the minor, has shown he has no problems using the “system” for his own personal gain.

Objector states that after the court instructed both parties not to speak to the minor about this matter, Mr. Immel called the minor and asked if he wanted to say good-bye to his mother. He then put his daughter, Michelle on the phone. Mr. Immel has taken himself to disclose that Michelle, who the minor has always known as his sister, is his real mom. Objector believes this action was taken deliberately to undermine her relationship with the minor and to alienate him from her. He has been told that Objector has lied to him his entire life, and that she is trying to keep him from his “real” family.

Objector requests the court review this matter in more detail and to focus on the serious emotional harm that has already been inflicted and the potential future harm to the minor.

Response to Objections filed by Rudun Robert Immel on 10/27/11 states he would like to bring it to the Court’s attention Ms. Elsea’s blatant disregard for the Court’s order of visitation by removing the minor from school early on Thursday morning so to prevent Mr. Immel from picking him up for the scheduled visitation and taking the minor out of town. Ms. Elsea’s objections are full of lies and inaccurate statements. As for the objection of no knowing Mr. Immel’s whereabouts, his absence from the minor’s life and negative influences on the minor, all are not true.

Angelina age: 1 year DOB: 10/17/09	<p align="center"><u>Temporary Expires 10/31/11</u></p> <p>MONIQUE GONZALES, paternal aunt, is petitioner.</p> <p>Father: ANGEL GONZALES – <i>personally served on 8/3/11.</i></p> <p>Mother: MIRANDA HIJAREDA – <i>declaration of due diligence filed on 8/10/11</i></p> <p>Paternal grandfather: Angel Gonzales, Jr. – <i>deceased.</i></p> <p>Paternal grandmother: Jeanette Ball – <i>personally served on 8/3/11.</i></p> <p>Maternal grandfather: Johnny Higureda – <i>deceased.</i></p> <p>Maternal grandmother: Lisa Valdez – <i>declaration of due diligence filed on 8/10/11</i></p> <p>Petitioner states mom is not stable. She is on drugs. Manuel tested positive for meth when he was born.</p> <p>Court Investigator Julie Negrete’s Report filed on 7/21/11.</p>	NEEDS/PROBLEMS/COMMENTS:
Manuel age: 4 mo. DOB: 5/24/11		<p>Continued from 9/19/11. Minute order states the mother is to be personally served. The Petitioner, Monique Gonzales, is directed to the Clerk’s Office in order to obtain information on serving an individual in prison.</p> <p>Note: Minute order dated 8/22/11 indicates Petitioner advised the court that the mother took off with Angelina to Colorado.</p> <p>1. Need proof of personal service of the Notice of Hearing along with a copy of the Petition or consent and waiver of notice on:</p> <p>a. Miranda Hijareda (mother)</p>
Cont. from 080111		
Aff.Sub.Wit.		
✓ Verified		
Inventory		
PTC		
Not.Cred.		
✓ Notice of Hrg		
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
✓ Pers.Serv. W/		
✓ Conf. Screen		
✓ Letters		
✓ Duties/Supp		
Objections		
Video Receipt		
✓ CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
✓ UCCJEA		
Citation		
FTB Notice		
	Reviewed by: KT	
	Reviewed on: 10/25/11	
	Updates:	
	Recommendation:	
	File 19 - Gonzales	

Atty Maloney, Alan B (pro per Petitioner/maternal step-grandfather)
 Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 11 years DOB: 10/14/00	<u>TEMPORARY EXPIRES 10/31/11</u>	NEEDS/PROBLEMS/COMMENTS:
	ALAN B. MALONEY, maternal step-grandfather, is petitioner.	1. Declarations of Due Diligence have been filed for the father, Phillip Replogle, paternal grandmother, Diane Replogle and maternal grandfather, Randy Barnes. If Court <i>does not dispense with notice</i> will need: <ol style="list-style-type: none"> a. Proof of personal service of the Notice of Hearing along with a copy of the petition on: <ul style="list-style-type: none"> • Phillip Replogle (father) b. Proof of service of the Notice of Hearing along with a copy of the petition on: <ul style="list-style-type: none"> • Diane Replogle (paternal grandmother) • Randy Barnes (maternal grandfather)
	Father: PHILLIP REPLOGLE – <i>declaration of due diligence filed on 8/31/11.</i>	
Cont. from	Mother: AMANDA BARNES – <i>consent and waiver of notice filed on 8/31/11.</i>	
Aff.Sub.Wit.	Paternal grandfather: John Replogle – <i>deceased.</i>	
✓ Verified	Paternal grandmother: Diane Replogle <i>- declaration of due diligence filed on 8/31/11.</i>	
Inventory	Maternal grandfather: Randy Barnes – <i>declaration of due diligence filed on 8/31/11.</i>	
PTC	Maternal grandmother: Michelle Barnes- <i>deceased.</i>	
Not.Cred.	Petitioner states the child has been living with him since 8/1/11. Since 2/2009 the child was living with the mother and had various addresses in Fresno. On many occasions the mother was homeless and slept in cars and lived in hotels. The mother is not stable and has consented to the guardianship. The father’s whereabouts is unknown and he has not visited the child since 2/2009.	
Notice of Hrg	Court Investigator Jennifer Young’s Report filed on 10/24/11.	
Aff.Mail		
Aff.Pub.		
Sp.Ntc.		
Pers.Serv.		
✓ Conf. Screen		
✓ Letters		
✓ Duties/Supp		
Objections		
Video Receipt		
✓ CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
✓ UCCJEA		
Citation		
FTB Notice		
		Reviewed by: KT
		Reviewed on: 10/25/11
		Updates:
		Recommendation:
		File 20 - Replogle

Petition for Appointment of Guardian of the Person (Prob. C. 1510)

Age: 10 DOB: 01/02/01	<u>TEMPORARY EXPIRES 10/31/11</u>	NEEDS/PROBLEMS/COMMENTS: 1. Need proof of service by mail of <i>Notice of Hearing</i> along with a copy of the <i>Petition for Appointment of Guardian</i> or <i>Declaration of Due Diligence</i> or <i>Consent and Waiver of Notice</i> on: - Robert Diaz (maternal grandfather)
	ADAN ROBLEDO AND DELORES ROBLEDO, paternal grandparents, are Petitioners.	
	FATHER: GENO ROBLEDO – <i>consents and waives notice</i>	
Cont. from	MOTHER: RACHEL DIAZ – <i>personally served on 9/6/11</i>	
Aff.Sub.Wit.		
✓ Verified		
Inventory	MATERNAL GRANDFATHER: ROBERT DIAZ	
PTC	MATERNAL GRANDMOTHER: JULIA DIAZ – <i>served by mail 10/04/11</i>	
Not.Cred.		
✓ Notice of Hrg	Petitioners state that the minor has lived with them for the past 5 years. He is doing well in school and all of his friends are where they live in Selma. Petitioners state that the minor’s mother removed him from their home after she was being questioned about receiving financial assistance for the minor when he is not in her care.	
✓ Aff.Mail	Petitioners state that the mother has had her other children removed from her care by CPS and does not have a good living environment for the minor.	
Aff.Pub.	Petitioners fear for the minor’s safety when he is in his mother’s care.	
Sp.Ntc.		
✓ Pers.Serv.	<i>Declaration from Irma Garcia</i> , longtime family friend, filed 8/31/11, states her twin sons are close friends with the minor (Geno), go to the same school, and are on the same soccer and baseball teams. The minor is a good influence on her two sons. Petitioners actively participate in the minor’s education and activities, and he (the minor) is fortunate to have such caring and supportive grandparents.	
✓ Conf. Screen		
✓ Letters		
✓ Duties/Supp		
Objections		
Video Receipt		
✓ CI Report		
9202		
✓ Order		
Aff. Posting		
Status Rpt		
✓ UCCJEA		
Citation		
FTB Notice		
	Court Investigator JoAnn Morris’ report filed 10/21/11.	
		Reviewed by: JF
		Reviewed on: 10/25/11
		Updates:
		Recommendation:
		File 21 - Robledo

Atty Verduzco, Sally (Pro Per – Spouse – Petitioner)
 Atty Lind, Ruth (Court-appointed for the Proposed Conservatee)

Petition for Appointment of Probate Conservator of the Person (Prob. C. 1820, 1821, 2680-2682)

Age: 70	<p>NO TEMPORARY – none requested</p> <p>SALLY VERDUZCO, Spouse, is Petitioner and requests appointment as Conservator of the Person with medical consent powers and dementia medication and placement powers.</p> <p>Capacity Declaration was filed 9-20-11. Voting rights <u>not</u> affected</p> <p>Petitioner states she does not feel safe with Mr. Verduzco in the home. He is a severe alcoholic and exhibits signs of dementia. He drinks daily and caught the house on fire in 2008. Dementia was discussed when he was hospitalized after a seizure in 2009. He was recently hospitalized again and now takes his medications with alcohol, if at all, and is drunk most of the day. Mr. Verduzco is delusional and sees people that are not there. He forgets that he is no longer a patient at Raintree Convalescent and calls them for his medication. He stays up all night talking to (and answering) himself.</p> <p>They have been married over 50 years and remain living together, but a wage assignment order for \$700.00/month is in place from a 2007 legal separation case. Petitioner filed when they were threatened with litigation due to the Proposed Conservatee’s medical bills, and re-filed in 2010, but states she does not intend to pursue.</p> <p>Petitioner states it is in her husband’s best interest that she be appointed his conservator as she is the one that has always cared for him.</p> <p>Court Investigator Jennifer Young filed a report on 10-24-11.</p>	<p>NEEDS/PROBLEMS/ COMMENTS:</p> <p><u><i>If petition goes forward, the following issues exist:</i></u></p> <ol style="list-style-type: none"> 1. Capacity Declaration does not support medical consent or dementia powers. 2. Need Citation and proof of personal service of Citation with a copy of the Petition on the Proposed Conservatee at least 15 days prior to the hearing per Probate Code §1824. 3. Need Notice of Hearing and proof of service of Notice of Hearing with a copy of the Petition at least 15 days prior to the hearing on all relatives per Probate Code §1822. 4. Need video receipt (Local Rule 7.15.9). 	
ODOB: 1-6-41			
Aff.Sub.Wit.			
<input checked="" type="checkbox"/> Verified			
Inventory			
PTC			
Not.Cred.			
Notice of Hrg			X
Aff.Mail			X
Aff.Pub.			
Sp.Ntc.			
Pers.Serv.			X
<input checked="" type="checkbox"/> Conf. Screen			
<input checked="" type="checkbox"/> Letters			
<input checked="" type="checkbox"/> Duties/Supp			
Objections			
Video Receipt			X
<input checked="" type="checkbox"/> CI Report			
9202			
<input checked="" type="checkbox"/> Order			
Aff. Posting			
Status Rpt			
UCCJEA			
Citation	X		
FTB Notice			
Reviewed by: skc			
Reviewed on: 10-26-11			
Updates:			
Recommendation:			
File 22 - Verduzco			

Atty Saigal, Harsh (pro per – father/Petitioner)

Petition for Letters of Administration; Authorization to Administer Under IAEA
(Prob. C. 8002, 10450)

DOD: 09/08/11	HARSH SAIGAL , father, is Petitioner and requests appointment as Administrator without bond.		NEEDS/PROBLEMS/COMMENTS: 1. Item 3(e) of the Petition is incomplete regarding whether decedent died intestate or ad a Will.
Cont. from	Full IAEA – ok		
<input type="checkbox"/> Aff.Sub.Wit.			
<input checked="" type="checkbox"/> Verified	All heirs waive bond.		
<input type="checkbox"/> Inventory			
<input type="checkbox"/> PTC	Residence: Fresno		
<input type="checkbox"/> Not.Cred.	Publication: The Business Journal		
<input checked="" type="checkbox"/> Notice of Hrg	Estimated Value of the Estate:		
<input checked="" type="checkbox"/> Aff.Mail	w/	Personal property - \$130,000.00	
<input checked="" type="checkbox"/> Aff.Pub.			
<input type="checkbox"/> Sp.Ntc.	Probate Referee: STEVEN DIEBERT		
<input type="checkbox"/> Pers.Serv.			
<input type="checkbox"/> Conf. Screen			
<input checked="" type="checkbox"/> Letters			
<input checked="" type="checkbox"/> Duties/Supp			
<input type="checkbox"/> Objections			
<input type="checkbox"/> Video Receipt			
<input type="checkbox"/> CI Report			
<input type="checkbox"/> 9202			
<input checked="" type="checkbox"/> Order			
<input type="checkbox"/> Aff. Posting			
<input type="checkbox"/> Status Rpt			
<input type="checkbox"/> UCCJEA			
<input type="checkbox"/> Citation			
<input type="checkbox"/> FTB Notice			
			Reviewed by: JF
			Reviewed on: 10/25/11
			Updates:
			Recommendation:
			File 23 - Saigal

Atty MAROIS, KIM of Santa Rosa (for Petitioner/Executor Joachim Voss)
Atty Helon, Marvin (Guardian Ad Litem for Dana Zsofia Fujisaka Calderon)

(1) First Account and Status Report of Executor and Petition for: (2) 1. Approval of First Account and Report; (3) 2. Instructions Re Pre-Mortem Check and ATM Withdrawals, Approval of Associated Actions and Request for Authority to Loan \$20,000 to Colombian Representatives; (4) 3. Determination of Entitlement to MetLife Annuity Proceeds; (5) 4. Construction of Will Re \$20,000 Advances; (6) 5. Construction of Will Re Application of TIAA-CREF Policy Proceeds; (7) 6. Request for Preliminary Distribution Dependent on Receipt of MetLife Annuity Proceeds; (8) 7. Allowance of Partial Statutory Executor Commission, Partial Statutory Attorney Fees and Reimbursement of Costs; (9) 8. Allowance of Interim Extraordinary Attorney Fees; and (10) 9. Authorization to Continue Estate Administration (Probate Code 850, 5000(b)(1) & (b)(3), 12003, 12200 & 21102)

DOD: 4/13/10	JOACHIM VOSS , Executor with bond of \$1,010,000.00, is petitioner.	NEEDS/PROBLEMS/COMMENTS:
	Account period: 4/13/10 – 3/31/11	<u>This matter is to be heard at 11:00 a.m. in Dept. 303.</u>
Cont. from 081111, 101711	Accounting - \$420,531.97 Beginning POH - \$373,450.15 Ending POH - \$372,840.47	<p>Note: The Court approved the request for executor’s commissions, attorney fees and costs as prayed on 8/31/11. The remaining issues have been continued to 10/31/11.</p> <p>Minute Order dated 8/11/11 the Court appointed Joanne Sanoian as Guardian Ad Litem for former minor beneficiary, Claire Baltasar, Curtis Rindlisbacher as Guardian Ad Litem for minor beneficiary, Nicole Vargas, and Marvin Helon as Guardian Ad Litem for minor beneficiary Dana Montoya.</p> <p><i>Please see additional page re: Needs/Problems/Comments:</i></p>
<input type="checkbox"/> Aff.Sub.Wit.	Executor statutory) - \$5,200.00 (50% of statutory)	
<input checked="" type="checkbox"/> Verified	Attorney statutory) - \$5,200.00 (50% of statutory)	
<input type="checkbox"/> Inventory	Attorney X/O - \$68,343.75	
<input type="checkbox"/> PTC	Costs - \$1,712.20	
<input type="checkbox"/> Not.Cred.	Petitioner states the Decedent was unmarried at the time of his death. He was survived by three minor children:	
<input checked="" type="checkbox"/> Notice of Hrg	Claire Atsuko Baltasar – (age 18, DOB: 9/24/1993) a resident and citizen of the Philippines her mother Pia “Peachy” G.J. Baltasar , is a resident and citizen of the Philipines;	
<input checked="" type="checkbox"/> Aff.Mail W/	Nicole Vargas – (age 11, DOB: 10/26/1999) a resident and citizen of Spain. Her mother Ana Melena Vargas Mairongo is a resident and citizen of Spain, and;	
<input type="checkbox"/> Aff.Pub.	Dana Zsofia Calderon Montoya – (age 8, DOB: 9/26/2003) – a resident and citizen of Columbia. Her mother, Marisol Calderon Montoya is a resident and citizen of Columbia.	
<input type="checkbox"/> Sp.Ntc.	<i>Please see additional pages</i>	
<input type="checkbox"/> Pers.Serv.		
<input type="checkbox"/> Conf. Screen		
<input type="checkbox"/> Letters		
<input type="checkbox"/> Duties/Supp		
<input checked="" type="checkbox"/> Objections		
<input type="checkbox"/> Video Receipt		
<input type="checkbox"/> CI Report		
<input type="checkbox"/> 9202		
<input type="checkbox"/> Order X		
<input type="checkbox"/> Aff. Posting		
<input type="checkbox"/> Status Rpt		
<input type="checkbox"/> UCCJEA		
<input type="checkbox"/> Citation		
<input type="checkbox"/> FTB Notice		
		Reviewed by: KT
		Reviewed on: 10/7/11
		Updates:
		Recommendation:
		File 1 - Fujisaka

Petitioner states just prior to the Decedent's death he became concerned that his daughters and their mothers would suffer severe financial hardship from a lack of funds following his demise. He also had concerns regarding the handling of his affairs in Columbia as he left no funds or bank account there for management of his Columbian property or affairs. To address this Decedent gave Petitioner a check for \$85,000.00 two days prior to his death and his ATM card and PIN, directed Petitioner to cash the check and make withdrawals from the ATM and provided Petitioner with explicit instructions as how to expend the funds.

Petitioner has elected to account for the receipt and expenditures of the funds collected outside of the Estate, because those expenditures are integrally related and pertain to the administration of the Estate. The amount received outside of the Estate amount to \$90,173.56 ("non-probate funds") and as reported arose from the \$85,000.00 check given to Petitioner two days prior to his death and ATM withdrawals totaling \$5,173.56 made by Petitioner seven to eight days after Decedent's death.

Using the non-probate funds Petitioner transferred \$20,000.00 to each mother of Decedent's three daughters, which was intended to be made on account of the \$60,000.00 gift Decedent directed in his Will be made to each of said mothers; \$1,036.00 was paid to CIAT (Decedent's employer) to satisfy decedent's debt for health insurance premiums; \$5,609.38 was expended for estate administration expenses and \$20,000.00 was transferred to Decedent's representatives in Columbia for administration of Decedent's affairs in Columbia; leaving non-probate funds on hand of \$3,528.18. (Note: Petition indicates that the "Decedent's representatives" in Columbia are other trusted friends of the Decedent in Columbia.)

Petitioner states the Decedent instructed him to pay \$20,000 to each mother from the proceeds of the \$85,000.00 on account of and to reduce the \$60,000.00 gift to each of them under his Will. **Petitioner requests an instruction from this court that the payment of \$20,000.00 to each mother constitutes an advance on the \$60,000.00 gift directed to be made to each of them under Decedent's Will.**

As of his death, Decedent was indebted to his employer CIAT, in Cali Columbia, in the amount of \$1,036.00 for health insurance premiums. Petitioner waived the presentation of a formal claim and paid Decedent's debt because it was just, due and reasonable.

Petitioner was required to incur significant expenses, both prior to and since his appointment as Executor, including travel to Columbia to assist Decedent and travel to California to locate Decedent's assets and retain counsel for his appointment as Executor and the administration of Decedent's Estate. Although Petitioner resides in Canada, he was in the Philippines from October 2010 until late April 2011. As Petitioner was unable to gain access to Decedent's funds in the United States until recently, the Estate's initial expenses were paid from the non-probate funds. **Petitioner hereby requests approval of his payment of travel, administration and miscellaneous expenses in the total amount of \$5,609.38. Notably the administration expenses are in excess of the ATM withdrawals of \$5,173.56.**

Petitioner transferred \$20,000.00 to the persons managing Decedent's Columbian affairs. The expenditure of these funds, and the additional funds collected in Columbia from cash found is the Decedent's apartment (\$442) and the proceeds from the sale of Decedent's automobile (\$8,485) are set forth in Exhibit B-1 of the petition. At the time of his death, Decedent was supporting his 6-year old daughter Dana, as well as her mother Marisol, with whom he shared custody.

Please see additional page

Decedent did not maintain a bank account in Columbia. Decedent's Columbian representatives had no funds with which to manage his property or affairs in Columbia. As reported on Exhibit B-1, the Columbian representatives expended the combined funds for miscellaneous estate administrative expenses, to make repairs and paint the Decedent's apartment to prepare it for sale or rental, to pay apartment fees, taxes, utilities, to obtain an appraisal of the apartment, and for the benefit of Dana and Marisol. As reported in Exhibit B-1 the Columbian account is over-expended by \$2,713.00 and the Columbian representatives are in need of additional funding. **Petitioner hereby requests Court approval of this transfer of \$20,000.00 to Decedent's Columbian representatives which were made with Decedent's explicit instructions from the non-probate transfer of funds transferred to him. Petitioner also requests authority to loan, with interest at the sort term Applicable Federal Rate, an additional \$20,000.00 of Estate funds to the Columbian representatives, to be repaid from the sale or rental proceeds of Decedent's apartment.**

For ease of Administration, Petitioner requests authority to account for the non-probate funds he collected within the Estate and to combine the remaining non-probate funds with the assets of the Estate.

In addition to the assets reported on the Final Inventory and the non-probate funds described above, Decedent also owned, and in his Will expressly referred to:

- a) Real property located in Lake Wallowa, Oregon, which is subject to an ancillary probate in the Circuit Court of the State of Oregon for the County of Wallawa (No. 2946);
- b) A TIAA-CREF "retirement account" with a date-of-death value of \$280,314.75, which Petitioner believes has a beneficiary designation in favor of Claire and/or her mother Peachy;
- c) MetLife Annuity Contract No. 0550516, for which MetLife had a reported value of \$589,913.31 as of Decedent's date of death which Decedent described in his Will as "Citi-Invest Account #23F-00532-15" (the "MetLife Annuity");
- d) Assets in Cali Columbia, consisting of an apartment with an estimated value of \$77,000-\$79,000, a cabin with no appreciable value, and an automobile.

Petitioner states he advised his counsel that Decedent did not file individual U.S. income tax returns for calendar years 2005-2009, apparently believing that no income taxes were due as a result of having earned his income abroad. Petitioner issued an IRS Form 2848 Power of Attorney to authorize his counsel to represent the estate as to Decedent's tax matters. After Letters were issued, Petitioner's counsel contacted the IRS and was advised that it was seeking significant taxes, interest and penalties. From 2005 alone the IRS had prepared a substitute return and sought in excess of \$307,000.00 including taxes, interest and penalties. The returns were successfully prepared and filed, and the taxes shown to be due thereon (including those due from 2005) in the aggregate amount of \$40,828.00 which were paid on March 4, 2011 (without interest or penalties). Petitioner's counsel prepared and submitted a request, with the filed returns, seeking a waiver of penalties on the basis of reasonable cause and the IRS Manual.

Please see additional page

Petitioner states Decedent's MetLife Annuity is by far his largest asset, with a reported market value at the date of death of \$589,913.31. Decedent expressly intended that his MetLife Annuity Policy No. 0550516 be included as part of his probate estate and distributed pursuant to his Will. On page 2 of his Will, following a list of his "financial assets" which specifically includes the MetLife Annuity, Decedent stated:

"Account Citi-Invest OAF045772 or 23F-00532-15 M98 already includes a provision for distribution of my assets upon my death. That statement is null and void and this statement supersedes and replaces it." [Emphasis added]

On page 3 of his Will, Decedent continues by stating:

"From these accounts, I want US\$ 60,000 each to go to the three mothers of my children: Marisol Calderon, Peachy Baltasar, Ana Meina Vargas Mairongo. The remaining income from these accounts should be distributed among my daughters in the following way:

45% to Dana Zsofia Fugisaka Calderon

35% to Claire Atsuko Balasar

20% to Nicole Vargas

The funds described above are to be held in trust by the executor of my estate, Dr. Joachim Voss, until each daughters 21st birthday, at which time each daughter obtains full control and responsibility for her portion of the principal sum according to the above established percentage allocation. In the interim the executor shall manage these funds prudently and disburse them according to my daughter's reasonable livelihood needs and best interest."

Decedent's Will was self-prepared in September 2009, after he had been diagnosed with pancreatic cancer and was preparing to undergo a serious operation with a 50% probability of survival. The 2009 surgery confirmed that the cancer had spread such that his survival prognosis was only six months. Nonetheless, Decedent's initial rebound from surgery gave him a false sense of hope for his survival and resulted in his delay in completing a "formal" estate plan.

September 11, 2009 (six days after his Will) Decedent signed a Columbian power of attorney/proxy ("Poder Especial") the terms of which expressly survive a principal's death under Columbian Law. This instrument restated Decedent's instructions regarding the funding of the trusts to be established for his daughters, as follows:

"This trust is composed of the following assets; (i) With my savings at Citibank, at TIAA-CREF retirement fund, at Schwab Mutual Investment Fund and with any deposits, investments or savings I may have in the United States of America, after deducting the USD 180,000 mentioned previously [\$60,000 give to PEACHY, ANA and MARISOL] ... The instructions herein contained revoke and void the decisions taken before Citibank, regarding my Citi-Invest OAF045772 y 23-F00532-15 M98 accounts" [Emph. Added].

Please see additional page

Following his surgery, Decedent referred to and contacted the New Jersey law firm of Borteck, Sanders & Torzewski, LLP, which specializes in international estate planning, to initiate trusts for his daughters. Decedent was awaiting Petitioners arrival in Columbia to assist him with working with that firm; however, Decedent's health declined and he died shortly after Petitioner's arrival. While preparing to proceed with the Borteck firm, Petitioner became concerned that the disposition of the MetLife Annuity under his Will might not suffice and he tried to change the beneficiary designation online to no avail. Decedent's attempts to change the beneficiary online are documented in his April 10, 2010 e-mail to Mary Cardenas, and employee of CitiBank in Fresno. A copy of the chain of e-mail is attached to the petition as Exhibit F.

MetLife has advised Petitioner that their beneficiary designation for the MetLife Annuity reflects the following:

Marisol Calderon	wife[<i>sic</i>]	20%
Dana Zsofia Fujasaka	daughter	40%
Claire Atsuko Fujasaka	daughter	20%
Nicole Vargas	friend[<i>sic</i>]	20%

Decedent's attorney sent several letters to MetLife, advising them of Decedent's intended disposition of the MetLife Annuity in accordance with his Will. Initially Counsel was advised MetLife would only pay the proceeds to the designated beneficiaries. Counsel was able to discuss this matter with Sheila McDermott, a MetLife representative with authority. During this conversation, Ms. McDermott informed Petitioner's counsel that none of the designated beneficiaries had filed a claim for her share of the MetLife Annuity proceeds. By it letter dated 2/24/11, MetLife agreed to place a restraint on the payment of death benefits of the MetLife Annuity until a petition could be filed in this matter and stated that it would have no objection to a court order directing payment of those proceeds.

Petitioner states he is personally aware that Decedent had many important reasons for directing that the MetLife Annuity be collected by Petitioner, as his Executor, and used to fund a testamentary trust for each of his daughters.

The Decedent's daughters were minors at his death. The Will clearly conveys his intention that Petitioner manage the assets designated for his daughters, including the MetLife Annuity, until each daughter attains age 21. Petitioner is uniquely qualified for this role, as he knows all of the Decedent's daughters and their mothers and is fluent in the written and spoken languages used by them.

The costs of collecting the MetLife Annuity by the designated beneficiaries would be prohibitive and are completely avoidable by paying the proceeds to Petitioner, as the Executor of Decedent's Will. MetLife advised that each minor daughter must have her claim completed by a legally appointed guardian. This requirement would necessitate establishing a guardianship in three different countries, coupled with official translations and verifications through the applicable U.S. Embassies. The payment of the MetLife Annuity proceeds to Petitioner, as Executor, completely avoids the costs, confusion and time delays inherent in establishing guardianship in foreign countries.

Please see additional page

In general, a contract pertaining to a non-probate assets, such as the MetLife Annuity requires some type of written instrument to be delivered to the insurer prior to and insured or annuitant's death, in order to effectively change the beneficiary designation. However, the Supreme Court in Pimentel v. Conselho Supremo de Uniao Portuguesa do Estado, (1936) 6 Cal. 2d 182, 187-188 held that there are three exceptions to the foregoing rule, which include:

- 1) Where the carrier has waived its own rules and, at the insured's request, issued a new certificate;
- 2) Where it was beyond the power of the insured to literally comply with the formalities; or
- 3) The insured pursues the course set out in the policy and does all in his power to change the beneficiary, but before the new policy is actually issued, the insured dies.

Pimentel clarifies these exceptions by stating on page 188:

“We think that where an insurer is not contesting the change the rule is not to be applied rigorously and where the insured makes every reasonable effort under the circumstances, complying as far as he is able with the rules, and there is a clear manifestation of intent to make the change, which the insured has but into the execution as best he can, equity should regard the change as effected.”

As noted above, MetLife placed a restraint on the payment of the MetLife Annuity proceeds pending this Petition and stated that it would not have any objection to the court order Mr. Voss seeks.

Petitioner is aware that an asset passes by beneficiary designation, such as life insurance or the MetLife Annuity at issue herein, is generally treated as a “nonprobate” transfer and is a matter of contract. However, Petitioner believes that Probate Code §5000 (b)(1) and/or (b)(3) serve to validate the provisions in Decedent's Will wherein he expressly “voided and superseded” the MetLife Annuity Beneficiary Designation.

Petitioner believes he is legally compelled to honor the directives in Decedent's Will.

Petitioner states Decedent's Will references “TIAA-CREF/\$210,498/Retirement/TIAA-CREF” (“TIAA-CREF”) among his financial assets on page 2 and, on page 3 states: “From these accounts, I want US\$ 60,000 each to go to the three mothers of my children . . .The remaining income from these funds should be distributed to my daughters in the following way:

45% to Dana Zsofia Fujisaka Caldron
35% to Claire Atsuko Baltasar
20% to Nicole Vargas”

Petitioner is informed and believes that the TIAA-CREF beneficiary designation in favor of PEACHY and CLAIRE and further, that PEACHY has considered disclaiming her interest in favor of CLAIRE. Petitioner requests that, subject to its further consideration, review and findings of the actual facts of distribution of the TIAA-CREF account (including whether it is actually received by PEACHY and/or CLAIRE), this Court consider said asset an asset of this Estate for purposes of determining PEACHY and/or CLAIRE'S entitlement to allocations and/or distributions of other property of this Estate pursuant to decedent's Will.

Please see additional page

Dept. 303, 9:00 a.m. Monday, October 31, 2011

Wherefore Petitioner prays for an Order:

1. Petitioner's first account for the period of April 13, 2010 through March 31, 2011, be settled, allowed and approved as filed;
2. All acts and proceedings of Petitioner as Executor, as disclosed in his First Account and this Status Report and Petition, be confirmed, ratified and approved;
3. The payments made by Petitioner, from Decedent's pre-mortem check and ATM withdrawals totaling \$90,173.56, for advances on specific cash bequests, administration and travel expenses, and Decedent's personal obligation, including costs pertaining to his Columbian real property as described on Exhibit B hereto, be approved and all remaining non-probate funds be deposited into the Estate account;
4. Petitioner be authorized to loan \$20,000 to Decedent's Columbian representatives for the administration of Decedent's Columbian real assets, to be repaid with interest at the short-term Applicable Federal Rate in effect at the date the loan is made, with proceeds from the sale of the rental of the Columbian apartment;
5. The proceeds of Decedent's MetLife Annuity Contract No. 0550516 be paid to Petitioner, as Executor herein, for administration in this Estate, as directed in Decedent's Will;
6. The \$20,000 payment to each of PEACHY, ANA and MARISOL be credited as an advance on the \$60,000 gift to her under Decedent's Will, such that the remaining amount due each PEACHY, ANA and MARISOL pursuant to Decedent's Will is \$40,000, plus the statutory interest thereon computed from April 14, 2011 through the date of payment;
7. The proceeds from Decedent's TIAA-CREF retirement policy, when, if and to the extent that it is received by PEACHY and/or CLAIRE, be counted as an asset of the Estate, for purposes of determining their entitlement to distribution under Decedent's Will, subject to the further review and findings of this Court;
8. Subject to this Court's determination that (i) the MetLife Annuity proceeds be distributed to the Executor of this Estate, (ii) the \$20,000 payments by Petitioner are advances on the \$60,000 gift otherwise payable to each of PEACHY, ANA and MARISOL; and (iii) further consideration and findings regarding any actual distribution and payment of the TIAA-CREF account to PEACHY and its partial satisfaction of her specific cash gift; Petitioner be directed to make a preliminary distribution of \$40,000, representing the unpaid portion of the specific gift of \$60,000 to each of PEACHY, ANA and MARISOL, with interest computed per Probate Code §12003;
9. An extension of time for 18 months from the date of the Court's Order, in which to complete Estate administration be granted.

Please see additional page

Response of Guardian Ad Litem for Dana Zsofia Fujisaka filed on 10/14/11.

- Respondent submits no opposition to the First Account and Request for Executor's handling of the funds he received from the Decedent prior to his death which are accounted for with his First Account.
- Respondent believes that the \$20,000 previously paid by the Executor to each of the three mothers of decedent's children should be charged as an advance against distributions due under decedent's Will.
- Respondent opposes the request in paragraph 10 of the Petition to authorize the loan of an additional \$20,000 to decedent's Colombian representatives. No loan or advance should be approved without an itemized budget and statement of the use of such funds, and terms of repayment or the transfer or subjecting to this proceeding of proceeds from Colombian assets. However, Respondent is informed that the decedent's minor daughter, Dana, who resides in Columbia is in need of reasonable support from the estate and that Decedent's Colombian representatives had been paying a monthly \$1,200,000 Colombian Pesos (approximately \$625.00 US) to her mother for Dana's support following the Decedent's death from the funds the Executor previously provided. Respondent believes a monthly family allowance or support allowance should be paid for Dana and consents to the advance of funds to the Colombian Representatives to be used for this purpose.
- As to the request for determination of entitlement to MetLife Annuity proceeds, Respondent believes that no determination of whether such proceeds are an asset of the estate should be made at this time and until after such other issues are first addressed and resolved. Respondent therefore opposes the determination at this time that the annuity is an asset of the estate.
- Respondent believes the issues as to the terms of the trust will need to be resolved whether or not the MetLife annuity proceeds are determined to be an asset of the estate and trust. Respondent presently opposes the annuity proceeds being determined to be an asset of the estate.
- Respondent believes Decedent's TIAA-CREF retirement account references in the petition and decedent's Will has a beneficiary designation making it payable to Decedent's daughter Claire and her mother, Peachy. Decedent's Will evidences a complete plan for his estate and assets mentioned in the Will. To carry out Decedent's intent, any benefits received by Claire or her mother, Peachy, as beneficiaries of the TIAA-CREF account should be treated as an advance against distributions due under Decedent's Will.
- Respondent opposes the request for an order for preliminary distribution at the present time on account of the unpaid portion of the \$60,000 gifts to the mothers of decedent's daughters. Respondent believes a distribution order should not be made until the conditional matters and matters affecting the remaining amounts due the mothers are first determined.

Please see additional page

Executor's Reply to the Response of Guardian Ad Litem for Dana Zsofia Fujisaka filed on 10/21/11. Executor:

- Requests the issue of a loan or advance on behalf of the Columbian administration be continued to the next hearing in this proceeding, by which time he believes an Executor will have been appointed in Columbia.
- Executor opposes the response of Respondent as to the determination of entitlement to the MetLife proceeds for the following reasons:
 - Respondent's arguments to not address the matter at hand. The petition sets forth in specific detail exactly why the MetLife Annuity proceeds should be determined to be a part of the estate.
 - The MetLife proceeds must be collected now. MetLife has been waiting for a Court decision since February 2011. In order to fairly treat the interest of all those who might claim an interest in the MetLife Annuity proceeds, this Court should hear and decide the matter now.
- Construction of the Will regarding the TIAA-CREF policy and gift reduction. Peachy has disclaimed her interest in the TIAA-CREF policy. As a result of the disclaimer, Claire is the only recipient of the TIAA-CREF account. Peachy's disclaimer simplifies the administration of this Estate because no portion of the account passes to her, as such there is no offset of the specific bequest to her. Secondly, Petitioner has already requested that the Court consider the TIAA-CREF account as an asset of the estate for the purpose of determining Claire's entitlement allocation and distributions pursuant to the Will.
- Petitioner agrees that the preliminary distribution should not be made until the MetLife Annuity is collected by the estate.

Petitioner requests that the Petition be granted as prayed, with the exception that the request for a loan or advance on account of the Columbian representative be continued to the next hearing on this matter.

NEEDS/PROBLEMS/COMMENTS:

1. **Petitioner states \$20,000.00 was given to each mother of Decedent's three daughters as part of their \$60,000 devise in Decedent's Will. Need receipt for these preliminary distributions to Marisol Montoya. – Declaration re: \$20,000 payments to each Mother of Decedent's Daughters filed on 8/9/11 showing a cancelled check paid to Glenn Hyman. Declaration includes an e-mail (written in Spanish without a translation) which states the e-mail confirms Marisol's receipt of the \$20,000.00. California Rules of Court Rule 3.1110 (g) states exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter.**
2. **Petition request payment of \$40,000 to each of the mothers of the Decedent's three children (a total of \$120,000) to satisfy their specific gifts in the Decedent's Will. Petition also states that the IRS has not yet informed Petitioner of its acceptance of the filed returns or the actions it will take with respect to the assessment of penalties and interest on the Decedent's late filed returns. Therefore there is a potential that the Decedent may owe the entire penalty assessed by the IRS an amount in excess of \$307,000. It appears premature to allow distribution to beneficiaries until it has been determined that the decedent will not owe IRS penalties and interest in excess of \$307,000.**
3. **Need order.**